

ORIGINAL

MOTION TO RESPOND AND OPPOSE

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CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: [Signature] DEPUTY

1 HIGH DESERT STATE PRISON
2 PO BOX 650
3 INDIAN SPRINGS, NV. 89070
4 JOSEPH MIZZONI #68549

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

9 JOSEPH MIZZONI
10 Plaintiff

CASE # 3:15-CV-00499-MMD-WGC

11
12 VS.

MOTION TO RESPOND AND OPPOSE
DEFENDANTS DEFAULT JUDGMENT
REVERSED BY THIS COURTS
GRANTING IT 6-15-17

14 STATE OF NEVADA ex.
15 C/O C. SMITH BRANNON,
16 Defendants

18 COMES NOW, Plaintiff Joseph Mizzoni #68549 PRO-SE
19 Respectfully ask to Respond and Oppose on the above motion
20 on his §1983 Civil Rights Complaint PURSUANT TO 42 U.S.C. §1983.
21

23 See; Horne v. Kerner, 404 U.S. 519 (1972) (Allegations of a pro-se
24 Complaint are held to less stringent standards than formal pleadings
25 drafted by lawyers).

STATEMENT OF FACTS IN SUPPORT I

1. (FACT 1) Plaintiff filed his First Amendment Complaint §1983
 2 on the 20th day of March, 2016.
 3

4 (FACT 2.) On the 2nd day of September, 2016 this Court filed a (Doc #10)
 5 "Order" stating on (PAGE 6 LINE 8-10) The Court finds that Plaintiff
 6 has stated colorable due process claims against Defendants Brannon and
 7 C. Smith. As the Court recarved in its first screening order (ECF No 4.),
 8 Plaintiff has state a colorable claim against Defendant Brannon. And on
 9 (PAGE 6 LINE 15-25) Plaintiff alleges that Smith made a false
 10 disciplinary report. An Inmate can state a cognizable claim arising from a
 11 false disciplinary report [REDACTED]
 12 if the false report was done in retaliation for the exercise of his
 13 constitutional rights or if the inmate was not afforded procedural due processes in
 14 connection with the resulting disciplinary proceedings as provided in Wolff v.
 15 McDonnell, 418 U.S. 539, 563-70 (1974). See; Moore v. Gipson, Case No. 1:13-cv-
 16 01820-BAM, 2014 WL 6893885, *10 (E.D. Cal. Dec. 8, 2014.) Plaintiff alleges
 17 that C. Smith wrote a fake report that resulted in disciplinary hearing in which
 18 he did not receive due process, Plaintiff may proceed on his Fourteenth
 19 Amendment due process claim against Defendants Brannon and Smith.
 20 And on (PAGE 7 LINE 27-28) It is further ordered that Plaintiff's 14th Amend.
 21 due process claim will proceed against Defendants Smith and Brannon.
 22 See; Plaintiff's §1983 Complaint Filed the 20th day of March 2016. to
 23 show due process violations and cured defenses.
 24

25 (FACT 3.) Defendants Attorney Ms. Erin L. Albright files a "LIMITED NOTICE
 26 OF APPEARANCE" dated the 23rd day of September, on behalf of, "ONLY,"
 27 Defendant Ira Brannon. Not C. Smith for service, and did not participate in the
 28 mediation phase of litigation. -2-

I.

STATEMENT OF FACTS IN SUPPORT I

(Continued)

1 (FACT 4.) On the 12 day of December, 2016 a "ORDER" was filed by
 2 the Court (Doc#18), and on (PAGE 2 LINE 10-22) 4. The Clerk of the Court
 3 Shall electronically "SERVE" a copy of this order and a Copy of Plaintiff's
 4 First amended complaint (ECF No 7) on the Office of the Attorney General of the
 5 state of Nevada, attention Kat Howe. 5. Subject to the findings of the
 6 screening order (EEF No 10.), within twenty-one (21) days of the date of
 7 entry of this order, the Attorney General's Office shall file a notice advising
 8 the Court and Plaintiff of: (a) the names of the defendants for whom it
 9 accepts service; (b) the names of the defendants for whom it does Not
 10 accept service, and (c) the names of the defendants for whom it is filing the
 11 last-known-address information under seal. As to any of the named defendants
 12 for whom the Attorney General's Office cannot accept service, the Office shall
 13 file, under seal, but shall not serve the inmate Plaintiff the last known
 14 address(es) of those defendants for whom it has such information. If the last
 15 known address of defendant(s) is post office box, the Attorney General's Office
 16 shall attempt to obtain and provide the last known Physical address(es).
 17 And on (PAGE 3 LINE 1-3) 7. IF the Attorney General accepts service of process
 18 for any named Defendants, such Defendants shall file and serve an answer or
 19 other response to the Complaint within sixty (60) days from the date of
 20 Order. The Attorney General did "ONLY" accept service for Ira Brannon
 21 on her "NOTICE OF ACCEPTANCE OF SERVICE" dated the 30 day of
 22 December, 2016. Stating she is going by (ECF No 18) filed December 12, 2016.
 23 She did not accept service for Defendant C. Smith and she had (21) DAYS
 24 to do so or under (ECF No 18) she was to go by (b) and (c) of that
 25 Order and she did not within that (21) DAY Dead line, nor ~~see~~ time extension
 26 to do so on Defendant C. Smith. ^{see} (b) and (c) Above. She waited until February 9, 2017
 27 to do it. See, "NOTICE OF UNDER SEAL SUBMISSION OF DEFENDANT CHRISTOPHER SMITH'S
 28 LAST KNOWN ADDRESS" and

STATEMENT OF FACTS IN SUPPORT I (CONTINUED)

1. DEFENDANTS ANSWER TO PLAINTIFFS AMENDED COMPLAINT (ECF No. 7) dated the 9th day of February, 2017, On this motion the (AG) for Defendants states on (PAGE 1 LINE 22-24) 1. Defendant claims that Christopher Smith is employed by (NOC) as a Correctional Disciplinary Writup Officer Defendant Brown claims only and all remaining allegations in this paragraph. This is a untrue statement C. Smith wrote the Disciplinary.

Then on (PAGE 2 LINE 1-9) 3. No response is required as this Defendant has been dismissed from this litigation pursuant to this Courts order (ECF No. 10) filed September 2, 2016. This is not true he is a defendant. 4. No response is required as this named Defendant has been dismissed from litigation pursuant to this Courts order (ECF No. 10) filed September 2, 2016. This is not true and numbers 5, 6, and 7 are also not true on C. Smith he is a defendant. See; (ECF No. 10) (PAGE 6 LINE 8-10), (PAGE 7 LINE 27-28). The attorney general never filed a answer for Defendant C. Smith because of the above Motion says.

(FACT 5) On the 9th day of January, 2017 Plaintiff filed a "MOTION TO RESPOND TO DEFENDANTS NOTICE OF ACCEPTANCE OF SERVICE," which on (PAGE 2 LINE 6-21) Plaintiff explains that Defendant C. Smith did not get service accepted by the Attorney General Ms. Albright, and plaintiff ask for a known address to serve C. Smith under FRCP 4(c), and forms for the US Marshalls Service, so he could give service and complete it.

(FACT 6.) On the 26th day of January, 2017 the Attorney General Ms. Albright filed a "OPPOSITION TO MOTION TO RESPOND TO DEFENDANT'S NOTICE OF ACCEPTANCE OF SERVICE," and on (PAGE 1 LINE 21-28 TO PAGE 2 LINE 1-6) states for plaintiff to cure deficiencies to his complaint on a First Amended Complaint. Plaintiff did this and his complaint against C. Smith was granted as a Defendant. See;

STATEMENT OF FACT IN SUPPORT I (CONTINUED)

1. (ECF No. 10) (PAGE 6 LINE 8-10), (PAGE 7 LINE 21-28). Then the Defendants

2. Attorney General goes on to say on (PAGE 2 LINE 7-28) II ARGUMENT.

3. Here, this Court dismissed C. Smith without prejudice after reviewing
 4. Inmate Mizzoni's initial complaint. (Id. at 9). This Court provided Inmate
 5. Mizzoni the opportunity to amend his complaint to include allegations
 6. that C. Smith personally participated in the disciplinary proceeding. (Id. at 7).
 7. Inmate Mizzoni failed to allege that C. Smith personally participated in the
 8. disciplinary hearing. Since Inmate Mizzoni failed to cure the deficiencies
 9. against C. Smith, C. Smith is still dismissed from this instant action.

10. III. CONCLUSION Since C. Smith has been dismissed from this instant action,
 11. Defendant respectfully request this Court deny Inmate Mizzoni's Motion
 12. to Respond to Defendants' Notice of Acceptance of Service. She uses the
 13. word Defendant respectfully request this Court deny Inmate Mizzoni's Motion
 14. to Respond to Defendants' Notice of Acceptance of Service meaning C. Smith
 15. is responding to deny Service. She states he's not even a defendant and
 16. her and his whole argument is moot because they are defendants. See, (ECF No 10)
 17. (PAGE 6 LINE 8-10), (PAGE 7 LINE 21-28).

19. (FACT 7.) On January 31, 2017 "ORDER" (Document 25) (PAGE 1 LINE 21-23)
 20. It states: The Court allowed a claim to proceed against Defendant Smith for
 21. making a false disciplinary report. (ECF No 10 at 6)

23. (FACT 8.) On January 30, 2017 "MINUTE ORDER IN CHAMBERS" (PAGE 1
 24. LINE 3-7) Plaintiff seeks clarification of Defendant's Notice of Acceptance of Service
 25. (ECF No 19) as the Attorney General's Office only accepted service on behalf of
 26. Defendant Brennan, and did not include Defendant C. Smith. In Defendant Brennan's
 27. opposition (ECF No 23), the Deputy Attorney General states that the Court's screening
 28. order dismissed C. Smith

STATEMENT OF FACTS IN SUPPORT I

(CONTINUED)

1 without prejudice and with leave to amend (Id at 2.). Go on (PAGE 1
 2 LINE 8-15 to PAGE 2 LINE 1-10) stating plaintiff was allowed to
 3 proceed (ECF No 10). Then on (PAGE 2 LINE 11-17) IT IS HEREBY ORDERED
 4 that Plaintiff's Motion to Respond to defendant's Notice of Acceptance of
 5 Service (ECF No 21) is GRANTED. The Attorney General's Office shall advise the
 6 Court within (10) days of the date of the entry of this Order whether it
 7 will accept service on behalf of Defendant C. Smith. IF the Attorney General's
 8 Office ~~cannot~~ cannot accept service, the Office shall file, under seal, but
 9 shall not serve the plaintiff, the last known address of Defendant's Smith.
 10 IF the last known address of the Defendant is a post office box, the Attorney
 11 General's Office shall attempt to obtain and provide the last known physical address.
 12 Here the Defendant is given (2) bites of the apple to accept service. See;
 13 (PAGE 3 LINE 1-28) December 12, 2016 ORDER in which the Defendant had
 14 (21) Days to do this, and she refused to. Under (FACT 4) of this Motion.

15 On February 9, 2017 she filed her only "DEFENDANT'S ANSWER TO
 16 PLAINTIFF'S AMENDED COMPLAINT (ECF No 7) and her "NOTICE OF UNDER
 17 SEAL SUBMISSION OF ~~DEFENDANT~~ DEFENDANT CHRISTOPHER SMITH'S
 18 LAST KNOWN ADDRESS". She continued to deny C. Smith as a Defendant
 19 on her "DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT (ECF No 7)
 20 (PAGE 1 LINE 22-23) and (PAGE 2 LINE 1-10), even after she was instructed
 21 on the January 30, 2017 ORDER that the Defendant C. Smith is a Defendant.
 22 So she then files her Under Seal Address Motion and does not accept
 23 service for C. Smith. Service should of been accepted here if the State was
 24 going to accept service, they did not.

25
 26 (FACT 9) February 9, 2017 MINUTES OF THE COURT (Doc # 33) (PAGE 1
 27 LINE 1-4) The Office of the Attorney General did not accept service of process
 28 on behalf of Defendant

STATEMENT OF FACTS IN SUPPORT I(CONTINUED)

1 Christopher Smith who is no longer an employee of the (NDOL) (ECF No 28).
 2 However, the Attorney General has filed the last known address of this
 3 Defendant under seal (ECF No. 27). The Attorney General knew at this
 4 time where the Defendant lived and his last known address, she could
 5 of took service for him, and he was a employee at the time of 3-28-15
 6 incident and the 4-1-15 Disciplinary Hearing for (NDOL) so she should
 7 of took service. The Attorney General Ms Albright stated C. Smith didn't
 8 know to contact the AG office for service after the USM interviewed him.
 9 at the June 15, 2017 Phone meeting with the Court. How come she didn't
 10 contact C. Smith and take service at that time knowing his address and
 11 whereabouts? Plaintiff followed the ORDER for service through the
 12 US Marshals.

13
 14 (FACT 10) Plaintiff served Defendant C. Smith on February 14, 2017, and the
 15 U.S. Marshals completed service on March 22, 2017 Under Seal.

16
 17 (FACT 11.) Plaintiff received a "SCHEDULING ORDER FOR CIVIL RIGHTS
 18 ACTIONS FILED BY INCARCERATED PRO-SE PLAINTIFFS (doc # 31)
 19 date February 9, 2017. On this Order (PAGE 1 LINE 19-24) IT IS HEREBY
 20 ORDERED: 1. Any and all pleadings that may be brought under Fed R. Civ.
 21 P. 13 & 14, or joining additional parties under Fed R. Civ. P. 19 & 20, shall be
 22 filed within (60) days from the date of this Order, which is April 10, 2017.
 23 Any party causing additional parties to be joined or brought into
 24 this action shall contemporaneously herewith serve a copy of this ORDER
 25 upon the new party or parties. The Attorney General Ms Albright did
 26 not include any new parties (C. Smith) as a Defendant with service of a
 27 plead, Defense, or Answer to comply to the above Rules, and FRCP 55(a) and
 28 FRCP 12(a). DEFAULT: 12(a)(1)(A)(i). -7

STATEMENT OF FACTS IN SUPPORT I

(Continued)

1 (FACT 12.) Plaintiff filed his "REQUEST TO DEFENDANTS FOR DISCOVERY
 2 CONFERENCE UNDER FRCP 37(a)(1) LETTER" dated the 21 day of
 3 March, 2017 (Doc # 44-1), on both Defendants Brannon / Smith.

4
 5 (FACT 13.) Plaintiff filed Admissions and Interrogatories and Motion to
 6 Compel Discovery on the 23 day of February, 2017.

7
 8 (FACT 14.) Defendants file a "DEFENDANT BRANNON'S RESPONSE TO
 9 PLAINTIFFS REQUEST FOR PRODUCTION OF DOCUMENTS [set one]"
 10 dated the 11 day of April, 2017.

11
 12 (FACT 15.) Defendants file a "DEFENDANT BRANNON'S RESPONSES TO
 13 PLAINTIFFS REQUEST FOR INTERROGATORIES [set one]" and on (PAGE 2
 14 LINE 28) state: "Interrogatory Request No. 1-4 are addressed to C. Smith
 15 who is not currently a party to this litigation. Also: Filed was
 16 "DEFENDANT BRANNON'S RESPONSES TO PLAINTIFFS FIRST REQUEST
 17 FOR ADMISSIONS" and on (PAGE 2 LINE 28) "Interrogatory Request No. 1-10
 18 are addressed to C. Smith who is not currently a party to this litigation.
 19 Both, dated the 31 day of March, 2017. Once again the Attorney General
 20 Mr. Albright has not took service on C. Smith and is in violation of the
 21 Discovery Rules of adding a party in the April 10, 2017 time deadline allowed
 22 Fed R. Civ. P. 19 & 20 and Fed R. Civ. P. 13 & 14.

23
 24 (FACT 16.) "ORDER" dated April 17, 2017 (Doc # 47) (PAGE 2 LINE 21-28)
 25 states: Plaintiff next references "interrogatory request No 1-4" which was apparently
 26 objected to on the basis that it addresses C. Smith who is not a party to this
 27 litigation. (ECF No. 45 at 3) Plaintiff states that he filed his complaint and amended
 28 complaint against C. Smith.

I.STATEMENT OF FACTS IN SUBJECT I

(continued)

1 and was allowed to proceed with a due process claim against Smith
 2 and Brennan. (Id.) He goes on to state that he completed the USM-285
 3 form with respect to C. Smith, and C. Smith was served (Id.) He asks
 4 whether the Attorney General's Office accepts service on behalf of C. Smith,
 5 and if so, he should provide responses to the interrogatories. (Id.) IF the
 6 Attorney General's Office is (continues to PAGE 3 LINE 1-7) not accepting
 7 service for C. Smith, he asks to be instructed as how to prosecute this case
 8 against C. Smith (Id.). And on (PAGE 4 LINE 20-28) TO (PAGE 5 LINE 1-5)
 9 States: Insofar as C. Smith is concerned, Plaintiff is correct that on February 9, 2017,
 10 the Court directed the Clerk to issue a summons for Christopher Smith and send
 11 it to the U.S. Marshal with the under seal last known address provided by the Attorney
 12 General's Office, along with a copy of the amended Complaint to complete service.
 13 (ECF No. 33.) The summons was issued the same day, and was returned executed
 14 showing service on C. Smith on March 22, 2017. (ECF No. 34, 43.) To date, Smith
 15 has not made an appearance in the case by filing an answer or other responsive
 16 pleading. Under Rule 12(a) (LRA Yi), he had until April 12, 2017 to do so.
 17 Since Smith has not yet appeared in the case, Plaintiff cannot serve discovery
 18 on him. Nor can he compel discovery responses from him. Instead, his recourse
 19 is to seek the Clerk's entry of default against him under Rule 55(c) for failing to
 20 plead or otherwise defend. Before taking any action under this rule, the Court
 21 encourages Plaintiff to confer with the Attorney General's Office to determine
 22 whether it will be accepting service on behalf of Smith.

23
 24 (FACT 17) Before plaintiff could follow the (Doc # 47) "ORDER" DATED 4-17-17
 25 directions, the Attorney General's Office Filed a "SUPPLEMENT NOTICE OF
 26 ACCEPTANCE OF SERVICE" for C. Smith, dated April 19, 2017. Plaintiff Filed a
 27 "MOTION TO RESPOND TO DEFENDANT SUPPLEMENTAL NOTICE OF ACCEPTANCE
 28 OF SERVICE"/AND" FILE

STATEMENT OF FACTS IN SUPPORT I

(Continued)

1. A DEFAULT OF JUDGMENT UNDER RULE 55(a) FOR FAILING TO PLEAD OR
 2. OTHERWISE DEFEND ON C. SMITH' / AND RESPONDING TO JUDGES 4-17-17
 3. ORDER" dated the 23, day of April, 2017. This Motion explains every thing
 4. that lead up to the Attorney General's "Supplement Notice of Acceptance of Service."
 * 5. See; Document #54 ORDER" Filed 5-16-17 Page 1 of 3, and on (PAGE 2 LINE 18-
 6. 25) to (PAGE 3 LINE 1-8) it states: On March 29, 2017, the U.S. Marshall's
 7. filed the return of the summons indicating that service of process was
 8. completed as to Defendant Smith on March 22, 2017, (ECF No. 43.)

9. Although the Attorney General's Office filed a Supplemental Notice of Acceptance
 10. of Service (ECF No. 48) on April 19, 2017, indicating it would accept service on
 11. behalf of Defendant Smith, an answer or other response to Plaintiff's amended
 12. complaint has never been filed on behalf of this Defendant as is required
 13. by Fed. Rules. Civ. Procedure 12(a).

14. Plaintiff's Motion to Respond to Defendant Supplement Notice of Acceptance
 15. of Service and File a Default of Judgment under Rule 55(a) for Failing to
 16. Plead or Otherwise Defend on C. Smith (ECF No. 51) is GRANTED to the extent
 17. Plaintiff seeks to have a default entered against Defendant Smith.

18. In accordance with Federal Rule Civ. P. 55(b), Plaintiff must make a
 19. separate application for entry of a Default Judgment against Defendant Smith.
 20. To the extent Plaintiff's motion seeks to have a default judgment entered as to
 21. Defendant Smith, Plaintiff's motion is denied. Dated and signed May 16, 2017.

22.
 23. (FACT 18.) The Attorney General's Office Files Four (4) MOTIONS after the Court's
 24. above ruling on Doc #54 ORDER. The First Motion was "MOTION FOR ENLARGEMENT
 25. OF TIME TO RESPOND TO PLAINTIFF'S "MOTION TO RESPOND TO DEFENDANT
 26. SUPPLEMENTAL NOTICE OF ACCEPTANCE OF SERVICE' / AND FILE A DEFAULT OF
 27. JUDGMENT UNDER RULE 55 A FOR FAILING TO PLEAD OR OTHERWISE DEFEND
 28. ON C. SMITH' / AND

1STATEMENT OF FACTS IN SUPPORT I (continued)

1 RESPONDING TO JUDGES 4-17-17 ORDER' (sic) (ECF No. 51)"; The Second
 2 Motion is "MOTION FOR ENLARGEMENT OF TIME TO FILE CORRECTIONAL
 3 OFFICER SMITH'S ANSWER TO PLAINTIFF'S COMPLAINT"; The Third Motion
 4 is "DEFENDANT CORRECTIONAL OFFICER SMITH'S JOINDER TO DEFENDANTS
 5 ANSWER"; and the Fourth Motion is "MOTION FOR ENLARGEMENT OF TIME TO
 6 RESPOND TO PLAINTIFF'S MOTION SEEKING PERMISSION TO OBTAIN
 7 BY COURT ORDER VIDEO TAPE EVIDENCE FOR THE NIGHT OF 3-28-15
 8 IN/OUT UNITS 5, 4, 8, 7 AT MNCC PRISON UNDER LOCAL RULE 26-7(B)
 9 FOR §1983, BETWEEN (sic) 8 AM AND 9 AM (ECF No. 50)"; all dated
 10 the 17 day of May, 2017. These motions are illegal anyways, this Court
 11 already made it decision on (ECF No. 50) and (ECF No. 51) on the
 12 Document 54 ORDER dated 5-16-17 and Granted plaintiff Default Judgment
 13 under Rule 55(a) and 55(b) to pursue the Default to the Court Clerk. The Attorney
 14 General had no grounds to file any of these (4) motions, they should be "STRIKEN" from
 15 the record, and never be heard or a reverse of Default for Mr. Plaintiff
 16 also wants to state Plaintiff was ordered on April 17, 2017 (Doc # 47) ORDER 4-17-17
 17 to contact the Attorney General before he filed a Default, and instead the Attorney
 18 General "got wind" of this "ORDER" and file a premature Motion ahead
 19 of Plaintiff accepting service on C. Smith, which Plaintiff should of got the
 20 first and last response on that "SUPPLEMENT NOTICE OF ACCEPTANCE OF
 21 SERVICE" dated 4-19-17, and he didn't which makes the motions moot. She got 3 Bites
 22 of the apple, and won on 6-15-17, against all "ORDERS", "MOTIONS" AND "PREJUDICES". It's been decided.
 23 (FACT 19.) On May 18, 2017 this Court filed a "MINUTES OF THE COURT (Doc # 61)
 24 front page states in Paragraph two(2): In view of the Courts order (ECF No. 54)
 25 granting plaintiffs motion and a default being entered as to Defendant Smith (ECF No. 59),
 26 Defendants' Motion for Enlargement of Time to Respond to Plaintiff's Motion to Respond
 27 to Defendant Supplemental Notice of Acceptance of Service (ECF No. 56) is DENIED as
 28 moot. Defendants may seek relief -11-

STATEMENT OF FACT IN SUPPORT I

(Continued)

1 under Fed. R. Civ. P. 55(c). Here it shows the Attorney General's Office
 2 was DENIED all those Motions filed May 17, 2017 the very next day
 3 on this ORDER, so once again its moot.
 4

5 (FACT 20) On May 18, 2017 another "ORDER" was Filed on (Doc #60) Page 1 of 1
 6 stating the Defendants Motion for Enlargement of Time to Respond to Plaintiffs
 7 Motion Seeking Permission to Obtain by Court Order Video Tape Evidence
 8 (ECF No. 55) is GRANTED. Here this shows "the only" Motion granted
 9 for the June 15, 2017 Court Hearing by telephonic conference, not the other
 10 Motions Filed on May 17, 2017. Those motions are moot. The Attorney
 11 General was instructed by the May 16, 2017 "MINUTES OF THE COURT (Doc #61)
 12 to seek relief under Federal Rule (Civ. P. 55(c) and the Attorney General
 13 did not do so under that Rule 55(c) so the Defendant C. Smith is in Default.
 14 It's been past her time to respond by Rule 55(c) by past (3) weeks and more
 15 to date and Plaintiff request his Default and Relief under his "APPLICATION
 16 FOR ENTRY OF A DEFAULT JUDGMENT AGAINST DEFENDANT ^(STATE OF MARYLAND) CRESS SMITH
 17 UNDER FRCP RULE 55(a) and 55(b)" / To Court Clerk" dated the 23 day of
 18 May, 2017.
 19

20 (FACT 21) On May 19, 2017 a "MINUTES OF THE COURT" "ORDER"
 21 (Doc # 62) states: In view of the courts order (ECF No. 54) granting Plaintiffs
 22 motion and a default being entered as to Defendant Smith (ECF No 54), Defendants
 23 Motion for Enlargement of Time to File Correctional Officer Smith's Answer to
 24 Plaintiffs Complaint (ECF No 57) is DENIED as moot. This shows the AG's Motions
 25 to Answer Complaint is Denied as moot, so she had not one argument to
 26 be awarded reverse Default of Judgment at the June 15, 2017 hearing, its all moot
 27 and denied. See (FACT 21 B) next Page.
 28

I.

STATEMENT OF FACTS IN SUPPORT I

(Continued)

1 (FACT 21-B) See; Benny v. Piper 799 F.2d 499 (1986)
 2 OVERVIEW: Plaintiff prisoner filed suit action against defendant prison
 3 guards under 42 USCS § 1983. Other prisoners who were convicted felons
 4 Served Summons & Complaints. Defendants ~~who~~ failed to answer and the district
 5 Court eventually entered Default judgments against them, refused to set
 6 aside defaults, and awarded plaintiff damages. The Court held on appeal
 7 that defendants actions were insufficient to constitute a general appearance and
 8 turned to defendants substantive argument that service was invalid because
 9 the process servers were then incarcerated felons. The Court held that the
 10 Fed. R. Civ. P. 4 meant precisely what it said and that any person over 18
 11 who was not a party to suit could have served the Summons & Complaint. The
 12 District Court was, therefore, correct to conclude that it had personal
 13 jurisdiction over plaintiff's complaint against the guards. The Court further
 14 held that the defendants failure to answer was culpable and the
 15 district Court was, correct to refuse to vacate the default judgment. The
 16 Court finally held that plaintiff had stated a valid claim and the
 17 district Court was correct to award Damages against defendants.

18
 19 Plaintiff filed for damages and Default Rule 55(a)(6). The defendants
 20 work load, secretaries, staff is not a defense to answering a complaint
 21 per FRCP 46. They ~~are~~ clearly Defaulted and C. Smith's not even a party
 22 but the AG wants to make him one now and its illegal.

24

25

26

27

28

(12-A)

STATEMENT OF FACT IN SUPPORT I(CONTINUED)

1 (FACT 22) On 6-8-17 the Attorney General Ms. Albright files another
 2 Motion for "MOTION FOR ENLARGEMENT OF TIME TO FILE DISPOSITIVE
 3 MOTIONS" and on this motion the Attorney General states on (PAGE 1 LINE 23-26)
 4 On May 16, 2017, a default was entered against Defendant Correctional Officer
 5 Smith. (ECF No. 54).

6 On May 30, 2017, Defendants filed a Motion to Set Aside Entry of Default.
 7 (ECF No. 65). A hearing on this motion is scheduled for June 15, 2017.

8 This has been decided on (Doc #60), (Doc #61), (Doc #54), (Doc #51). The AG
 9 filed the same EXACT Motions on May 17, 2017 and was denied on
 10 all motions to file a answer on C. Smith, a enlargement of time to
 11 do so, and respond to Default of Judgment Rule 55, ect.. See; (FACT 18)
 12 (PAGE 10 LINE 23-28) to (PAGE 11 LINE 1-22) of this Motion to oppose.

13 She uses a excuse of The undersigned acknowledges that ultimately the
 14 responsibility lies with her and she has taken steps to ensure that
 15 calendaring mishaps do not occur in the future (PAGE 3 LINE 11-13) on her
 16 Motion to Set aside Entry of Default dated 5-30-17. And on (PAGE 2 LINE 10-

17 28) B. Calendaring Issues. The Office of the Attorney General for the State of
 18 Nevada has had some support staffing issues in the Bureau of Litigation's
 19 Carson City office (Exh. A.) Due to these support staffing issues, the undersigned
 20 and her caseload have been assigned to four (4) different legal assistants
 21 ~~in the past four (4) months~~ in the past four (4) months (Id) In the Bureau of Litigation's
 22 Carson City office, the legal assistants have the initial responsibility for
 23 receiving filed papers and pleadings and calendaring the date for a responsive
 24 paper or pleading. (Id.)

25 Because of the support staffing issues in the Bureau of Litigation's Carson
 26 City office, the following responsive papers and pleadings were not calendared on the
 27 undersigned's calendar: an Answer for Defendant Christopher Smith, an opposition to
 28 "Motion to Respond to Defendant

STATEMENT OF FACTS IN SUPPORT 7

(Continued)

1. Supplement Notice Acceptance of Service/and File a Default of Judgment
 2. Under Rule 55(a) for Filing to Plead or Otherwise Defend on C. Smith/AND
 3. Responding to Judges 4-17-17 ORDER" (sic), and in opposition to "Motion
 4. Seeking Permission To Obtain by Court Order Video Tape Evidence for the Night
 5. of 3-28-15 in Court Units 5, 4, 8, 7 at NMCC Prison Under Local Rule 26-K(b),
 6. for 8:1983, Between 8p, and 930 pm" (sic) (Id)

7. The staffing issues are being resolved with the hiring of new secretaries and
 8. supervising secretaries. (Id.) Also, new procedures are being put into place for
 9. additional layer of oversight as to calendaring by secretaries that are
 10. specifically designed to address the errors that occurred in this matter (Id)

11. This is "not" a defense to answering per Fed Rule C. P. on Motions or
 12. Orders by the Court. There here the Attorney General uses no "points and
 13. authority", case law to support her Motion on "DEFENDANT'S MOTION
 14. TO SET ASIDE ENTRY OF DEFAULT". This is not good cause under
 15. Rule 55(c) to be granted a reverse decision on the Defendant C. Smith Default.
 16. Here she states two or motions she doesn't respond to and when she did
 17. respond she was already denied the same exact motions. See; (Doc#50),
 18. (Doc#51), (Doc#54), (Doc#60), (Doc#61) in this case # 3:15-cv-00499-MMD-WGC.
 19. She has had ample opportunities to file answers to motions and orders and responses
 20. to them, and she did not because of staffing issues. Plaintiff doesn't have
 21. "any" staff or secretaries to help him as a pro se and on Doc#25 ORDER.
 22. Plaintiff Denied Appointment of Counsel 1-31-17. The AG wouldn't even
 23. recognize C. Smith as a Defendant, said he was dismissed on the First Amended
 24. Complaint and argued it. See; "OPPOSITION TO MOTION TO RESPOND TO DEFENDANT'S
 25. NOTICE OF ACCEPTANCE OF SERVICE" dated 1-26-17. She was ordered to take
 26. Service on two occasions by Court Order. See; (Doc#18) ORDER 12-12-16 and
 27. See (Doc#24) ORDER dated 1-30-17. Both to take service on C. Smith. And Plaintiff
 28. put uncountable motions in for Service but -14

STATEMENT OF FACTS IN SUPPORT I

(continued)

1. was denied service by AG.

2.

3. (FACT 23) On June 15, 2017 Telephone Conference with Honorable Judge
4. Cobb and Mr. Albright, and myself, the Default was reversed in favor
5. of (AG) Albright. Plaintiff asked if he could oppose and was granted
6. it. And this is his OPPOSITION.

7.

8. II. CONCLUSION

9. WHEREFORE, Plaintiff showing good cause with "Points and Authorities"
10. under Federal Rules of Civil Procedure and Respectfully asked to reverse
11. its June 15, 2017 ORDER on the reverse of Default of Judgment for
12. Defendant C. Smith. The Defendant nor its counsel can justify any of its
13. not pleading, responding, or Defending Plaintiff's Complaint in a (20 DAY) time
14. allowed FRCP(4j); FRCP 55(A); 55(b); 12a(1)(A)(i), or FRCP 19 & 20/13 & 14
15. For service of process and Default of Judgment, and Discovery rules to add new
16. parties to the case within (60 Days) which was April 10, 2017 and no motion
17. or time extension was ever filed on this FRCP Rule to add any parties by the
18. Attorney General's Office. The plaintiff endures Prejudice and Delay by: (1) was
19. not allowed to a possible settlement under the mediation conference and the
20. Attorney General did not follow the FRCP on C. Smith as her Defendant; (2) Plaintiff
21. was Delayed the Defendant's Address C. Smith from 12-12-16 to 2-9-17 because
22. the Attorney General wouldn't accept service nor give the ordered sealed address
23. of Defendant C. Smith; (3) Plaintiff has no staff, secretaries or lawyers and has
24. to hand write all these responses over and over again because the AG doesn't
25. answer for Defendant C. Smith, but its ok for her to use staff, secretaries,
26. and fellow lawyers to help her and she still couldn't respond and wins a reverse
27. on the Default to C. Smith without case law or any FRCP "Points and Authorities" like
28. plaintiff does; (4) Delay on case

STATEMENT OF FACTS IN SUPPORT I

(continued)

1 for Discovery and Motions because now C. Smith gets to be a defendant
 2 2 years later on a June 15, 2017 Hearing which by all prior orders and
 3 motions were moot, and the AG should not be allowed a reverse by
 4 excuses weeks and months later are staffing issues and not case law. The
 5 Plaintiff has to wait until October 2017 now and wait for the AG
 6 to get (Orders of the court on Interrogatories, Admissions, Compel Discovery
 7 and she did it even add the new party Smith by April 10, 2017 and she
 8 still has not. Plaintiff has injured wrist/hands because of Defendant C. Smith
 9 and the other Defendant in Case # 3:15-cv-00313-MMD-WGC and now must write
 10 more unwarranted/unwarranted litigation in order to argue something he all
 11 ready has done for months and years. All is a Delay and Perjudice to
 12 Plaintiff and unfair. Plaintiff shows good cause why the Court should
 13 still allow Plaintiff to relief of Default Judgment against C. Smith under
 14 FRCP 55(a) and (b). Staffing Issues is not a excuse or defense to get a reverse judgment.
 15 Plaintiff opposes ~~the~~ the "MOTION FOR ENLARGEMENT OF TIME TO FILE DISPOSITIVE MOTIONS"
 16 and Video Motion on the same grounds as the "MOTION TO SET ASIDE ENTRY OF DEFAULT;"
 17 on this brief. All motions should be denied.

18 (All Motions are time barred except Dispositive Motions)

19 For Brannon.

RESPECTFULLY SUBMITTED

this 18 day of June 2017

BY: Joseph F. Mezzone

JOSEPH MEZZONE

#68549

IIIAFFIDAVIT OF JOSEPH MEZZONI #68549 IN PRO-SE

1 STATE OF NEVADA)

2 : ss

3 COUNTY OF CLARK)

4

5 (I, Plaintiff in PROSE JOSEPH MEZZONI #68549 in support of this
6 affidavit here for a "MOTION TO RESPOND AND OPPOSE DEFENDANTS
7 DEFAULT JUDGMENT REVERSED BY THIS COURTS GRANTING IT
8 6-15-17" on his §1983 Complaint IN THE UNITED STATES DISTRICT
9 COURT DISTRICT OF NEVADA, does so in truth under §1746 USC/NRS LAWS.
10 under penalty of perjury.

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RESPECTFULLY SUBMITTED

this 18 day of June, 2017

By: Joseph M.
JOSEPH MEZZONI
68549

CERTIFICATE OF SERVICE BY US MAIL

I Joseph Mezzoni #68549 hereby certifies pursuant to 28 USC §1746 that on this 19 day of June 2017. I mailed a true correct copy of the foregoing "MOTION TO RESPOND AND OPPOSE DEFENDANTS DEFAULT JUDGMENT REVERSED BY THIS COURTS GRANTING IT 6-15-17" and IN THE UNITED STATES DISTRICT COURT DISTRICT OF NEVADA by giving it to a prison official at High Desert State Prison Brass Slip # sealed and postage prepaid and address to:

(1) CLERK, US DISTRICT COURT
DISTRICT OF NEVADA
400 South Virginia Street, Room #301
RENO, NEVADA. 89501

(2) OFFICE OF ATTORNEY GENERAL
NEVADA
MS. ALBRIGHT
100 North Carson Street
Carson City, NV. 89701-4717

(3) ADDRESS OF PLAINTIFF
JOSEPH MEZZONI #68549
High Desert State Prison
PO Box 650
INDIAN SPRINGS, NV. 89070

BY: Joseph Mezzoni
JOSEPH MEZZONI
#68549